

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

TRANSCRIPT OF  
DETENTION HEARING

BEFORE THE HONORABLE  
DANETA WOLLMANN  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

Counsel for Plaintiff: Kathryn Rich  
U.S. Attorney's Office  
515 Ninth Street, Suite 201  
Rapid City, SD 57701

Counsel for Defendant: Stephen D. Demik  
Law Office of Stephen D. Demik  
1617 Sheridan Lake Road  
Rapid City, SD 57702

Also Present: George Dull Knife - Defendant

Transcriber: Carla Dedula, RPR, CRR, CRC

1 (Proceedings in open court at 12:19 p.m.)

2 THE COURT: This is in the matter of the United  
3 States of America v. George Dull Knife. It's criminal file  
4 number 20-50122.

5 Counsel, would you note your appearances for the  
6 record.

7 MS. RICH: Kathryn Rich for the United States.

8 MR. DEMIK: Good afternoon, Your Honor. Stephen  
9 Demik on behalf of George Dull Knife present before the  
10 court.

11 THE COURT: The report should reflect that all  
12 parties are present here in the courtroom.

13 Good afternoon, Mr. Dull Knife.

14 THE DEFENDANT: Good afternoon, Your Honor.

15 THE COURT: We are here before the court on the  
16 defendant's motion for release. I did review that as well  
17 as the attachment which had the transcript from the initial  
18 appearance in Oregon. And then I have also gone back and  
19 reviewed Document 1, the Indictment; as well as Document 26,  
20 the addendum to the Pretrial Services Report; as well as the  
21 original Pretrial Services Report at Document 25.

22 So with that, Mr. Demik, this is your motion so  
23 I'll have you proceed first.

24 MR. DEMIK: Yes, Your Honor. I agree with pretrial  
25 services that Mr. Dull Knife presents a low risk of

1 nonappearance according to Docket 26 and low risk of danger  
2 to the community. He has very little criminal history at  
3 all, and so we would ask that he be released. I can  
4 represent to the Court that I spoke to his sister, Cora, who  
5 is the intended release plan. She's in Rapid City. She's  
6 fully aware of court today. She just couldn't get off of  
7 work.

8 THE COURT: Sure.

9 MR. DEMIK: But she did want me to represent to the  
10 Court that she's perfectly willing and able to accept  
11 Mr. Dull Knife and make sure that he appears at all court  
12 appearances.

13 THE COURT: Ms. Rich.

14 MS. RICH: Thank you, Your Honor. I'm appearing  
15 here today on behalf of Ms. Sazama, who is in Pine Ridge  
16 doing trial preparations on a different case. But I have  
17 been briefed on this.

18 The United States is seeking detention of Mr. Dull  
19 Knife pending trial in this matter. The factors for the  
20 Court to consider under the release statutes notes under  
21 3142(e)(3)(B) there is a presumption of detention in this  
22 case because the defendant is charged with a  
23 924(c)(1)(A)(iii) discharge of a firearm during the  
24 commission of a violent crime. That's a 10-year mandatory  
25 minimum charge. So based on that charge there is a

1 presumption that he be detained unless he can properly rebut  
2 that.

3 The nature of the charges are all crimes of  
4 violence, the 924(c), in addition, the other remaining  
5 charges that are listed in the Indictment, which the Court  
6 indicated it reviewed: Assault with intent to commit  
7 murder, assault with a dangerous weapon. The remaining  
8 charges are against the co-defendant. The nature of these  
9 charges reflect an assault against Carmen Burgee, who was  
10 shot in her hand. She has been in communication with our  
11 office. And under her rights under the Crime Victims'  
12 Rights Act -- she is living in the Fort Pierre area, and so  
13 she could not be personally present for the hearing today,  
14 but she did indicate that she wanted us to convey that she  
15 is suffering from severe PTSD symptoms as a result of her  
16 injuries and is fearful of the defendant being released.  
17 She required surgery on her hand and lost her job as a nurse  
18 due to the injuries.

19 The incident occurred as she and another individual  
20 were leaving the Dull Knife property. They were attempting  
21 to leave when they were shot at by the defendant. Multiple  
22 shots hit the vehicle various places on the vehicle as it  
23 was leaving and hit the side, the back seat, blew out the  
24 back window, the side pillar between the front and back seat  
25 of the cars. The rear windshield was gone. So it was not

1 just a single shot. This was a multiple shot barrage.  
2 Multiple witnesses identified the defendant there as the  
3 shooter. Multiple firearms were found at the scene when the  
4 search warrant was conducted in this case. Live ammunition  
5 and spent casings were all located in various -- around the  
6 residence and in various vehicles on the property.

7 I know the defendant doesn't have a significant  
8 criminal history. However, he does have a tribal arrest  
9 history, the Oglala Sioux Tribe, significant for assault and  
10 intoxication. I do have a copy of his tribal criminal  
11 history, which indicates that on July 7th, 2017, he was  
12 arrested for child endangerment, disorderly conduct, elder  
13 abuse, breaking and entering. On December 18, 2017, he was  
14 arrested for a tribal weapons offense. On April 19, 2020,  
15 he was arrested for second degree assault and disorderly  
16 conduct. On May 5 of 2020 he had protective -- taken into  
17 protective custody due to intoxication and drunk driving.  
18 And then that was all leading up to this arrest, which  
19 occurred on -- or excuse me, this offense, which is alleged  
20 to have occurred on August 5 of 2020. In addition, there's  
21 multiple reports of domestic violence between him and his  
22 co-defendant leading up to this shooting.

23 As to the risk of nonappearance, the defendant has  
24 demonstrated that he has connections outside of South Dakota  
25 and left immediately following this incident and went to

1       Oregon. I understand he's contesting that it was a flight.  
2       However, he did leave immediately following.

3           THE COURT: Do you have a timeline for that?

4           MS. RICH: It was within several days, Your Honor.

5           THE COURT: Thank you.

6           MS. RICH: I don't know the exact time frame but  
7       within a week.

8           Furthermore, his co-defendant is a significant  
9       other. She is out on release and, my understanding, is back  
10      in the area. And she's alleged to have lied to law  
11      enforcement as part of covering up for the defendant in  
12      this.

13           Further, Your Honor, our concerns are that even if  
14      he were to agree to conditions and to reside with his sister  
15      here in Rapid City, that there really are no meaningful  
16      conditions that the Court could place that would ensure the  
17      safety of victims and potential witnesses, which include  
18      family members, and that would keep him separate from his  
19      co-defendant in this case in a way that is -- for example,  
20      if they have communications now, they're all either recorded  
21      through the jail system or something to that nature; but  
22      outside, with just conditions, that's not going to be  
23      sufficient to curtail any conversations that they might  
24      have. And there -- you know, even house arrest or ankle  
25      monitoring, it doesn't stop a person from going other

1 places. We would know if they left under ankle monitoring,  
2 but it wouldn't stop anything from actually happening after  
3 he were to leave that location. And so I don't have -- I  
4 don't know anything else about the defendant's proposed  
5 release plan as far as whether or not his sister is  
6 suitable. It sounds like she's gainfully employed, but it  
7 doesn't sound as if probation has had the opportunity to  
8 visit with her or to verify any of the suitability of the  
9 home and what he would be doing there in a way that would  
10 keep everyone safe and keep him from leaving. So we would  
11 ask that he be detained.

12 THE COURT: Mr. -- I tell you I reviewed the  
13 transcript. And I realize the information that was relayed  
14 to the judge in Oregon was secondhand through an AUSA. Have  
15 you reviewed that transcript?

16 MS. RICH: I did prior to court, Your Honor.

17 THE COURT: Is it accurate what was presented to  
18 the judge as far as the nature of the charges -- that there  
19 was a minor in the car? It was sort of implied that there  
20 was somewhat of a pursuit. Is that accurate?

21 MS. RICH: There was somewhat of a pursuit, but  
22 it's not my understanding that that person was a minor, Your  
23 Honor. There was another person driving. The victim was  
24 not the driver. It was a younger person but not a -- but  
25 not like a minor child.

1                   THE COURT: Okay. And then what was this -- if you  
2 could elaborate on the nature of the pursuit.

3                   MS. RICH: So there was -- the defendant -- so the  
4 person -- Carmen, the victim, and then the other person in  
5 the vehicle was the child of Carmen, an adult child, but a  
6 child of her. And they were there to pick someone up at the  
7 residence. And that person was not ready to leave yet, and  
8 so they had -- were going to come back. And so there's kind  
9 of all matter of family connections. I had specifically  
10 inquired of the agent the connection between the victim and  
11 the defendant, and it's my understanding is that the driver,  
12 who is Carmen's son, is -- so Carmen is the mother to K.T.  
13 Burgee is the person in the vehicle who is the defendant's  
14 stepdaughter's -- the father of that child. So it's kind of  
15 a convoluted connection, but there is like a familial  
16 connection there through various relationships. And so they  
17 were there to pick up someone. And then as they were  
18 leaving, they drove -- there's like a little approach to the  
19 house, and they drove towards the highway. And then that's  
20 when, as they were leaving, that the defendant began  
21 shooting at the vehicle. And they called for law  
22 enforcement and kept leaving, but not before, like, multiple  
23 rounds were fired at the vehicle.

24                   THE COURT: Thank you, Ms. Rich.

25                   And then lastly, do you have a copy of the

1 defendant's tribal history?

2 MS. RICH: I do, Your Honor. And I would note for  
3 the record that this has been provided to the defense in the  
4 course of discovery.

5 THE COURT: All right.

6 (Pause)

7 THE COURT: All right. Mr. Demik, any response?

8 MR. DEMIK: Yes, Your Honor. I'll just take the  
9 points in order as provided by the prosecutor.

10 First of all, with regards to the argument that  
11 it's a crime of violence in relation to a felony, I think  
12 that's sort of legal Jiu-Jitsu. Because the felony offense,  
13 of course, is assault with a dangerous weapon. And so that,  
14 of course, is alleged to have happened with a firearm. So  
15 it's not a separate felony offense. It's an assault with a  
16 firearm.

17 That said, Your Honor, I don't deny that there's a  
18 rebuttable presumption. I think that's what the law states  
19 clearly. I do think the presumption can and is rebutted  
20 here.

21 With regards to the offense conduct, which is the  
22 majority of the government's presentation, my client is  
23 presumed innocent until he's proven guilty. Now I am at  
24 somewhat of a disadvantage because I just received discovery  
25 this morning. It's rather voluminous, so I just started

1 going through it before court this morning. I haven't had a  
2 chance to go through all of it. So I'm ill-prepared to  
3 specifically rebut every point made by the prosecutor. But  
4 I think it's enough to say that my client is presumed  
5 innocent, and the law is very clear on that.

6 With regards the firearms that were found at his  
7 residence, Your Honor, that isn't a crime. If you look at  
8 his criminal history, there's no felony convictions. He's  
9 not a prohibited person. I dare to say if you searched most  
10 houses in South Dakota you would probably find firearms.  
11 That doesn't mean he's a danger to the community.

12 There's no record of any violence. I have not had  
13 a chance to review the tribal records, Your Honor. I don't  
14 dispute that those were probably in discovery, but I haven't  
15 had a chance to go through those. But if we look at his  
16 criminal history, as stated in Document 25, which is the  
17 Pretrial Services Report, there's one disorderly conduct  
18 from 2016, which I believe is related to a protest. Again,  
19 no violence associated with that, Your Honor. So I don't  
20 think that that shows in any way, much less by  
21 clear-and-convincing evidence, that my client presents a  
22 danger to the community. In fact, I would say his lack of  
23 criminal history proves the opposite.

24 With regards the tribal history, I already stated,  
25 Your Honor, I haven't received those records. If the Court

1 does rely on that tribal history, Your Honor, I would like  
2 an opportunity to come back before the Court, perhaps  
3 investigate those. In my experience, anecdotally, tribal  
4 history records don't always reflect the actual facts as  
5 they transpired.

6 Lastly, Your Honor, with regards to the  
7 co-defendant, the release plan that I'm proposing releases  
8 my client to Rapid City. My understanding by the  
9 prosecutor's presentation is that the co-defendant would be  
10 on the reservation. So that's one point.

11 The second point is that, with regards to  
12 recordings of phone calls, well, that may be true, Your  
13 Honor, but nowhere in 3142 do we consider the government's  
14 ability to record somebody's phone calls to keep somebody in  
15 detention. I don't agree with that argument. I think that  
16 conditions can be set. And in Document 26 on the second  
17 page the pretrial services recommends that my client not  
18 have any contact with any alleged victims, witnesses, or  
19 codefendants. That's a standard condition in many cases in  
20 this district, and there's a multitude of ways that pretrial  
21 services can enforce that, Your Honor.

22 I don't think that my client presents -- I agree  
23 with pretrial services that he doesn't present a risk of  
24 nonappearance and a very low risk of danger to the  
25 community. So I'm joining pretrial services in recommending

1 and requesting that he be released on bond. If there are  
2 any other conditions that the Court would like to impose, I  
3 can discuss them with my client. I don't foresee any  
4 objection to those whatsoever.

5 It is a serious case, Your Honor, but my client is  
6 presumed innocent, and we haven't had a trial on this  
7 matter. Now is, obviously, not the time for that trial.  
8 Now what 3142 tells us is nothing in this section shall be  
9 construed to go against the presumption of innocence which  
10 rules here.

11 So I am asking for release, Your Honor. I think  
12 it's an appropriate case for release. Thank you.

13 THE COURT: Thank you, Mr. Demik.

14 Well, Mr. Dull Knife, I have reopened the detention  
15 hearing at your attorney's motion. It is a bit curious that  
16 the judge in Oregon said that he held a detention hearing  
17 and then deferred to this court to rehold one. That's a bit  
18 unusual, but that's fine. We'll reopen the detention  
19 hearing so I have an opportunity, like we've done here  
20 today, for me to take a fresh -- what's called a de novo  
21 look at it.

22 In deciding whether to release or detain you, I'm  
23 to apply a statute that's known as the Bail Reform Act.  
24 That's at 18 U.S.C. §3142. And I'm to consider, first of  
25 all, the nature and circumstances of the offense charged,

1       whether or not it involves a crime of violence, or if it  
2       involves a firearm. There's other ones that fall in that:  
3       Minor victims, controlled substances. But so the analysis  
4       starts with the nature. There are some crimes when people  
5       are charged with them Congress has said people who are  
6       charged with this should be detained, because it's such a  
7       serious crime, unless there is evidence that rebuts that  
8       demonstrating that you're not a flight risk or not a danger  
9       to the community.

10           And for risk of flight, the government would need  
11       to show that by a preponderance of the evidence that you're  
12       a risk of flight; or if you're a danger, they'd have to show  
13       that by clear and convincing evidence. So that's the burden  
14       of proof.

15           And I'm to weigh a number of factors in answering  
16       those questions. I'm to consider the weight of the evidence  
17       against the person. I'm to consider the history and  
18       characteristics of the person, including your character;  
19       your physical and mental condition; your family ties; your  
20       history of employment; your financial resources; your length  
21       of residence in the community; your community ties; your  
22       past conduct; your history relating to drug or alcohol  
23       abuse; your criminal history; your record concerning  
24       appearances in court at court proceedings; and whether at  
25       the time of the alleged offense if you were on some form of

1 supervision -- which you weren't here, so that factor does  
2 not apply -- and then finally, the nature and seriousness of  
3 the danger to any person or the community that would be  
4 posed by your release.

5 Nothing about the court's analysis removes the  
6 presumption of innocence. Regardless of any decision by the  
7 court whether to release or detain you, you are presumed to  
8 be innocent of the charges.

9 A number of these factors weigh in your favor. You  
10 have been a lifelong resident of the community, other than  
11 this period of time where you were absent. I'll talk about  
12 that in just a moment. You have strong community ties. You  
13 have a history of employment in the past. Excluding your  
14 criminal tribal history, there's at least no state  
15 indication that you have a history of substance abuse. Now  
16 your tribal history indicates otherwise: That there are  
17 some substance abuse issues. And then finally, there's  
18 nothing to indicate that you have any mental health  
19 conditions or problems. So those are all things that weigh  
20 in your favor.

21 I was going to indicate that you have little to no  
22 criminal history. That analysis has since been -- I  
23 revisited that, given the fact that -- and I'm going to mark  
24 this and put it into evidence -- that you do have a tribal  
25 history that does involve some alleged assaults, a weapons

1 offense. There's at least two assaults. And so there is  
2 some indication that you do have a criminal history that's  
3 troubling to the court.

4 The other thing that is apparently in dispute is  
5 the timing of you leaving the jurisdiction. It is troubling  
6 to me. I know there's some representation that you left to  
7 take care of a family member of your co-defendant. However,  
8 it is extremely concerning that that would happen,  
9 coincidentally, immediately after this very serious offense.

10 Finally, that brings us to analyze the other  
11 factor: One, again, this presumption; but I'm to consider  
12 the nature of the charges here. It involves a firearm. The  
13 allegation is that there were multiple shots fired, striking  
14 a victim. Fortunately, nobody was killed or you'd be  
15 looking at potentially much different, more serious charges.  
16 But the government's proffered evidence that multiple  
17 witnesses have identified you as the shooter. And while I  
18 agree with Mr. Demik that in and of itself possessing a  
19 firearm, if that was found on the property, isn't a crime,  
20 it would be evidence to support allegations that a firearm  
21 was used to shoot at a vehicle shortly before. So that goes  
22 to the weight of the evidence which weighs in favor of  
23 detention.

24 The victim still does live in the area and has  
25 expressed that she is fearful of you. I don't know anything

1 about the motivation involved, but certainly the multiple  
2 shots as a vehicle was fleeing gives the court pause.

3 And I've thought back on cases where I have  
4 released defendants and where I've detained defendants  
5 involving shooting at vehicles. The ones -- and on two  
6 occasions was -- I've released somebody who shot at a  
7 vehicle where there was one single shot. Fortunately,  
8 nobody, I don't believe, in any of those instances was  
9 struck or injured; or if so, it was shrapnel or glass that  
10 caused an injury. And then I have one case where somebody  
11 else had multiple shots, or they used a gun that was likely  
12 to cause injury. And in that case when there was an injury  
13 that occurred, I detained that person.

14 And this case presents a very close call for me,  
15 but I'm going to decide to detain you based on the fact that  
16 multiple shots were fired, along with the fact that there is  
17 some indication that you've had prior instances of weapons  
18 and assault charges, along with the presumption.

19 So I do find that the decision to detain you still  
20 remains the correct one. I will enter an oral order denying  
21 your motion for release.

22 And if you think I've made a mistake or the wrong  
23 decision, you certainly have the right to appeal that to the  
24 district court judge, Judge Viken. And he would give it a  
25 de novo review and review the evidence and facts

1 independently and decide if you should be released or  
2 detained. But I find, given the nature of the circumstances  
3 here, the multiple shots, the victim is fearful of you, your  
4 prior weapons offense and assault charges in tribal court,  
5 that it is appropriate to detain you. So that will be my  
6 decision. And again, you're free to appeal that if you wish  
7 to do so.

8 Anything further?

9 MS. RICH: No, Your Honor.

10 MR. DEMIK: No, Your Honor. Thank you.

11 THE COURT: All right. We'll be adjourned.

12 (Proceedings concluded at 12:42)

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1 UNITED STATES DISTRICT COURT)  
2 DISTRICT OF SOUTH DAKOTA : SS CERTIFICATE OF TRANSCRIBER  
3 SOUTHERN DIVISION )

4 I, Carla Dedula, Official United States District Court  
5 Reporter, Registered Professional Reporter, Certified  
6 Realtime Reporter, and Notary Public, hereby certify that  
7 the above and foregoing transcript has been transcribed to  
8 the best of my ability from the District Court's FTR  
9 recording system consisting of pages 1 - 17.

10 I further certify that I am not a relative or employee  
11 or attorney or counsel of any of the parties hereto, nor a  
12 relative or employee of such attorney or counsel, nor do I  
13 have any interest in the outcome or events of the action.

14 IN TESTIMONY WHEREOF, I have hereto set my hand this  
15  
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